

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 14, 2024**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MATTHEW and SARAH ALERIA,  
individually and for the marital community  
thereof,  
  
Plaintiffs,  
  
v.  
  
STATE FARM FIRE AND CASUALTY  
COMPANY, an Illinois corporation, doing  
business in the State of Washington,  
  
Defendant.

No. 2:23-CV-00268-SAB

**ORDER DENYING  
PLAINTIFFS' MOTION FOR  
RECONSIDERATION**

**ECF No. 19**

Before the Court is Plaintiffs' Motion for Reconsideration, ECF No. 19. Defendant opposes the motion. ECF No. 20. Plaintiffs did not file a reply. Plaintiffs are represented by Joseph Kuhlman and Ryan Best. Defendant is represented by Christopher Furman and James Hicks. The motion was heard without oral argument. The Court has reviewed the record and is fully informed. For the reasons that follow, the Court denies the motion.

Plaintiffs ask the Court to reconsider its February 1, 2024 Order of Dismissal, ECF No. 18, dismissing this action without prejudice pursuant to Federal Rule of Civil Procedure 41(a) and awarding Defendant attorneys' fees and costs in the amount of \$8,025.00. Plaintiffs claim the fee award was in error

**ORDER - 1**

1 because Defendant suffered no legal prejudice from the removal. They further  
2 claim the award is manifestly unjust because it “creates a chilling effect on  
3 legitimate litigation by David-like individuals against a Goliath-like  
4 megacorporation like Defendant.” ECF No. 19 at 6. Alternatively, Plaintiffs ask the  
5 Cour to reduce the award to \$2,715.00 by eliminating payment for hours spent by  
6 defense counsel opposing the dismissal. ECF No. 19 at 6.

7 Motions for reconsideration “should not be granted, absent highly unusual  
8 circumstances.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th  
9 Cir.2000). “Reconsideration is appropriate if the district court (1) is presented with  
10 newly discovered evidence, (2) committed clear error or the initial decision was  
11 manifestly unjust, or (3) if there is an intervening change in controlling law.”  
12 *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

13 Here, Plaintiffs fail to proffer any grounds justifying reconsideration. Having  
14 failed to file a reply brief, Plaintiffs left uncontested Defendant’s detailed 12-page  
15 opposition to the motion for voluntary dismissal, including Defendant’s request for  
16 the award of fees and costs. Defendant contended that Plaintiffs’ allegations of  
17 damages below \$75,000 amounted to bad faith and forum manipulation. ECF No.  
18 11 at 5. Defendant also commented on the fact that Plaintiffs’ stipulation to a  
19 maximum amount of damages less than \$75,000 did not include any reference to  
20 punitive damages or attorney’s fees, raising concerns about disclaiming damages to  
21 defeat federal jurisdiction while preserving the right to recover more in future  
22 litigation. ECF No. 11 at 5-7. Defendant urged the Court to award fees and costs  
23 where the loss of a federal forum was a legal interest amounting to legal prejudice  
24 and the dismissal amounts to forum shopping. Plaintiffs now claim that an award  
25 of fees and costs is improper because of lack of prejudice. The reconsideration  
26 process is not one to raise arguments that could have been raised in briefing  
27 permitted by the Local Civil Rules, such as the lack of prejudice, inequities, or  
28 alleged chilling effect of a fee award.

1 After Defendant filed its response to the motion for voluntary dismissal,  
2 Plaintiffs should have known of their option to withdraw the motion, thereby  
3 avoiding the award of costs and attorney's fees. *See Beard v. Sheet Metal Workers*  
4 *Union, Local 150*, 908 F.2d 474, 476-77 (9th Cir. 1990). Instead, Plaintiffs failed  
5 to respond at all.

6 Plaintiffs' counsel also failed to appear for oral argument ordered by the  
7 Court. The hearing was held on January 26, 2024, two days after Mr. Kuhlman  
8 entered his notice of appearance. The hearing commenced at 9:00 a.m. and  
9 adjourned at 9:10 a.m. ECF No. 16. The Court waited until 9:05 a.m. and at that  
10 time, the courtroom deputy emailed both attorneys for Plaintiffs. At 9:18 a.m., after  
11 the hearing had concluded, the Court received a response email from Mr. Best  
12 indicating Mr. Kuhlman "should be attending." At 9:19 a.m. and 9:23 a.m. the  
13 Court received automated messages generated by the Zoom platform that Mr.  
14 Kuhlman was attempting to join the hearing. The Court received no notice, either  
15 by email, phone or filed declaration, that Mr. Kuhlman had been attempting to join  
16 the hearing since 9:01 a.m., as is now presented in the Motion for Reconsideration.  
17 Mr. Kuhlman's attempted appearance does not justify reconsideration.

18 The Court's attorney fee award includes compensation for 21.5 hours spent  
19 opposing Plaintiffs' motion for voluntary dismissal. Plaintiffs ask the Court not to  
20 award fees for this work because it was "not related to the removal." ECF No. 19  
21 at 6. However, the interests of justice and the mandate of Federal Rule of Civil  
22 Procedure 41(a)(2) are served by awarding fees and costs associated with the  
23 removal and opposing the motion for voluntary dismissal. Reasonable costs and  
24 fees "are often imposed upon a plaintiff who is granted voluntary dismissal under  
25 [Rule] 41(a)(2)." *Stevedoring Servs. of Am. v. Armilla Int'l B.V.*, 889 F.2d 919, 921  
26 (9th Cir. 1989); *see also Koch v. Hankins*, 8 F.3d 650, 652 (9th Cir. 1993) (noting  
27 "work product rendered useless by the dismissal should be awarded as a condition  
28 of the voluntary dismissal"); *Marlow v. Winston & Strawn*, 19 F.3d 300, 306 (7th

1 Cir. 1994) (“As a general rule, an award of reasonable attorneys’ fees, less any fees  
2 for work that may be utilized in subsequent litigation of the same claim, is an  
3 entirely appropriate condition of dismissal.”). Defendant expended considerable  
4 resources both with respect to removal and the dismissal, which is all work that  
5 cannot be used in the future. Given the legal complexities associated with both  
6 removal and voluntary dismissal, and the quality of work based on extensive legal  
7 research, the hours expended by defense counsel were not unreasonable.

8 Plaintiffs have not proffered grounds for reconsideration of the Court’s  
9 February 1, 2024 Order.

10 Accordingly, **IT IS ORDERED:**

- 11 1. Plaintiffs’ Motion for Reconsideration, **ECF No. 19**, is **DENIED**.
- 12 2. The fee award shall be paid within **sixty (60)** days of this Order,  
13 unless otherwise ordered by the Court.

14 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
15 this Order and provide copies to counsel.

16 **DATED** this 14th day of March 2024.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is fluid and cursive, with a horizontal line underneath it.

23 Stanley A. Bastian  
24 Chief United States District Judge  
25  
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27  
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